

## Article 15.

### Health Care Personnel Registry.

#### **§ 131E-255. Nurse Aide Registry.**

(a) Pursuant to 42 U.S.C. § 1395i-3(e) and 42 U.S.C. § 1396r(e), the Department shall establish and maintain a registry containing the names of all nurse aides working in nursing facilities in North Carolina. The Department shall include in the nurse aide registry any findings by the Department of neglect of a resident in a nursing facility or abuse of a resident in a nursing facility or misappropriation of the property of a resident in a nursing facility by a nurse aide.

(b) A nurse aide who wishes to contest a finding of resident neglect, resident abuse, or misappropriation of resident property made against the aide, is entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice by certified mail of the Department's intent to place findings against the aide in the nurse aide registry.

(c) "Nursing facility", as used in this section, means a "combination home" as defined in G.S. 131E-101(1) and a "nursing home" as defined in G.S. 131E-101(6) and also means "facility" as that term is defined in G.S. 131E-116(2).

(d) The Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section.

(e) No person shall be liable for providing any information for the nurse aide registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the nurse aide registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee. (1991, c. 185, s. 1; c. 761, s. 26; 1995 (Reg. Sess., 1996), c. 713, ss. 3(a), (b).)

#### **§ 131E-256. Health Care Personnel Registry.**

(a) The Department shall establish and maintain a health care personnel registry containing the names of all health care personnel working in health care facilities in North Carolina who have:

- (1) Been subject to findings by the Department of:
  - a. Neglect or abuse of a resident in a health care facility or a person to whom home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.
  - b. Misappropriation of the property of a resident in a health care facility, as defined in subsection (b) of this section including places where home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.
  - c. Misappropriation of the property of a health care facility.

- d. Diversion of drugs belonging to a health care facility or to a patient or client.
  - e. Fraud against a health care facility or against a patient or client for whom the employee is providing services.
- (2) Been accused of any of the acts listed in subdivision (1) of this subsection, but only after the Department has screened the allegation and determined that an investigation is required.

The Health Care Personnel Registry shall also contain all findings by the Department of neglect of a resident in a nursing facility or abuse of a resident in a nursing facility or misappropriation of the property of a resident in a nursing facility by a nurse aide that are contained in the nurse aide registry under G.S. 131E-255.

(a1) The Department shall include in the registry a brief statement of any individual disputing the finding entered against the individual in the health care personnel registry pursuant to subdivision (1) of subsection (a) of this section.

(b) For the purpose of this section, the following are considered to be "health care facilities":

- (1) Adult Care Homes as defined in G.S. 131D-2.
- (2) Hospitals as defined in G.S. 131E-76.
- (3) Home Care Agencies as defined in G.S. 131E-136.
- (4) Nursing Pools as defined by G.S. 131E-154.2.
- (5) Hospices as defined by G.S. 131E-201.
- (6) Nursing Facilities as defined by G.S. 131E-255.
- (7) State-Operated Facilities as defined in G.S. 122C-3(14)f.
- (8) Residential Facilities as defined in G.S. 122C-3(14)e.
- (9) 24-Hour Facilities as defined in G.S. 122C-3(14)g.

(c) For the purpose of this section, the following are considered to be "health care personnel":

- (1) In an adult care home, an adult care personal aide who is any person who either performs or directly supervises others who perform task functions in activities of daily living which are personal functions essential for the health and well-being of residents such as bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
- (2) A nurse aide.
- (3) An in-home aide or an in-home personal care aide who provides hands-on paraprofessional services.
- (4) Unlicensed assistant personnel who provide hands-on care, including, but not limited to, habilitative aides and health care technicians.

(d) Health care personnel who wish to contest findings under subdivision (a)(1) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice of the Department's intent to place its findings about the person in the Health Care Personnel Registry.

(d1) Health care personnel who wish to contest the placement of information under subdivision (a)(2) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case hearing shall be filed within 30 days of the mailing of the written notice of the Department's intent to place information about the person in the Health Care Personnel Registry under subdivision (a)(2) of this section. Health care personnel who have filed a petition contesting the placement of information in the health care personnel registry under subdivision (a)(2) of this section are deemed to have challenged any findings made by the Department at the conclusion of its investigation.

(d2) Before hiring health care personnel into a health care facility or service, every employer at a health care facility shall access the Health Care Personnel Registry and shall note each incident of access in the appropriate business files.

(e) The Department shall provide an employer or potential employer of any person listed on the Health Care Personnel Registry information concerning the nature of the finding or allegation and the status of the investigation.

(f) No person shall be liable for providing any information for the health care personnel registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the health care personnel registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee.

(g) Health care facilities shall ensure that the Department is notified of all allegations against health care personnel, including injuries of unknown source, which appear to be related to any act listed in subdivision (a)(1) of this section. Facilities must have evidence that all alleged acts are investigated and must make every effort to protect residents from harm while the investigation is in progress. The results of all investigations must be reported to the Department within five working days of the initial notification to the Department.

(h) The North Carolina Medical Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section.

(i) In the case of a finding of neglect under subdivision (1) of subsection (a) of this section, the Department shall establish a procedure to permit health care personnel to petition the Department to have his or her name removed from the registry upon a determination that:

- (1) The employment and personal history of the nurse aid does not reflect a pattern of abusive behavior or neglect;
- (2) The neglect involved in the original finding was a singular occurrence; and
- (3) The petition for removal is submitted after the expiration of the one-year period which began on the date the petitioner's name was added to the registry under subdivision (1) of subsection (a) of this section. (1995 (Reg. Sess., 1996), c. 713, s. 3(b); 1998-212, s. 12.16E; 1999-159, s. 1; 2000-55, s. 1; 2004-203, ss. 52(a), (b), (c).)

**§ 131E-256.1. Adverse action on a license; appeal procedures.**

(a) The Department may suspend, cancel, or amend a license when a facility subject to this Article has substantially failed to comply with this Article or rules adopted under this Article.

(b) Administrative action taken by the Department under this section shall be in accordance with Chapter 150B of the General Statutes. (2000-55, s. 2.)